

**Minutes**  
**Bar Harbor Planning Board**  
**October 21, 2009**  
**Council Chambers – Municipal Building**  
**93 Cottage Street**

**I. CALL TO ORDER — 6:00 p.m.**

*Members Present: Kevin Cochary, Chair; Lynn Williams, Vice Chair; Buck Jardine, Secretary. Also present: Anne Krieg, Planning Director; Brian Madigan, Staff Planner; Lee Bragg, Town Attorney.*

**II. EXCUSED ABSENCES**

*Ms. Williams moved to excuse Ms. Stevens-Rosa. Mr. Jardine seconded the motion and the Board voted unanimously to approve the motion.*

**III. ADOPTION OF THE AGENDA**

*Ms. Williams moved to continue the Board's review of the Jordan Fernald Funeral Home Zoning Map amendment to the November 4, 2009 Planning Board meeting. Mr. Jardine seconded the motion and the Board voted unanimously to approve the motion.*

**IV. APPROVAL OF MINUTES**

September 23, 2009 Minutes – Joint workshop with Town Council.

*Ms. Williams moved to adopt the minutes as written. Mr. Jardine seconded the motion and the Board voted unanimously to approve the motion.*

**V. REGULAR BUSINESS**

**A. Continuation of a Public Hearing – SP-09-02 – West Street Hotel**

**Project Location:** West Street, Bar Harbor Tax Map 104, Lots 113-118, 122, 123, 143, 144, 146, 147, 149

**Applicant:** North South Construction Inc.

**Application:** Hotel and Accessory Uses

Mr. Salvatore declined to provide an overview of the recently submitted traffic study stating that he felt that the study spoke for itself. Mr. Cochary commented that due to the complexity of the document he would like to have the engineer who prepared the document present the findings of this study. He added that a peer review of the document may be necessary depending on the results of the engineer's presentation. Mr. Salvatore agreed to have the traffic engineer present the findings from the study at the November 4 Planning Board meeting.

Mr. Hamilton requested the Board make a formal or informal decision on the proposed height of the hotel.

Ms. Krieg asked that the applicant submit a final set of architectural plans that match the site plan. She added that the Board would need this information before it can make a formal decision for the project. She also stated that Wright Pierce (the town's subconsultant) is still in the process of conducting a peer review for water and sewer impacts. She stated that the Board cannot issue a formal decision for the project until the results of these studies have been disclosed to the Board.

Mr. Bearor, attorney for David Witham, stated that he and his client agree with the Town attorney's interpretation of a front yard. He urged the Board to consider the impact this interpretation would have on the applicant's proposed green space credits. Mr. Bearor stated that he and his client feel that the 5<sup>th</sup> floor of the hotel still contains "habitable space" despite the fact that all guest suites have been removed.

David Bowden, a member of the public, stated that he disagrees with the height and greenspace interpretation the Town has taken on this project.

The applicant discussed his interpretation of the height ordinance with the Board at length. Ms. Williams added that when a person interprets an ordinance they must interpret it so that their interpretation leads to a result that is logical and not absurd. She stated that "OR" might lead the applicant to have to make two choices that are redundant in the case of interpreting Section 125-21(G). Mr. Hamilton stated that if you read the ordinance in the manner suggested by Ms. Williams, then one would end up reading certain provisions that differ between 124-21(G)(1) and (2) out of existence. Therefore, he stated he believes the ordinance must be treated holistically. Ms. Williams pointed out that under the applicant's interpretation of the height requirement, no developer would ever choose the second choice which requires the construction of affordable housing. She added that the extra story in height is meant to be an incentive. So, if a developer wants to put on a fourth floor, he must also devote some of that floor to affordable housing. Mr. Moore, Mr. Hamilton and the Board debated the affordable housing incentive at length.

Mr. Moore, Mr. Hamilton, and Mr. Jardine debated each other's interpretation of the Downtown Business II definition of height. Mr. Hamilton stated that when reading an ordinance you must give meaning to all of its provisions. Mr. Cochary stated that he felt Mr. Hamilton's statement regarding his interpretation of Downtown Business II refutes the previous statements Mr. Hamilton made regarding the height provision in Section 124-21(G). Mr. Cochary added that he felt Mr. Hamilton was speaking against his own argument.

Mr. Moore stated that if there is ambiguity in an ordinance the law court states you must interpret the ordinance in favor of the property owner.

Ms. Krieg discussed the history of the development and adoption of the revised dimensional controls for the Downtown Business District which were formally adopted in 2005. She stated the 45' height provision was placed in the ordinance to encourage applicants to create different roof styles. She added that the 2001

Downtown Master Plan concluded that Bar Harbor is essentially a three story (35' tall) town. She added that the intent of the ordinance revision to include the affordable housing provision was to preserve the three story height but use a "San Francisco" model of architecture. This model says a building must be stepped back after it reaches 35' in height to preserve pedestrian scale. Ms. Krieg stated that the affordable housing incentive was added because you could only get the fourth story if a developer included affordable housing which was an issue of prominence at the time. The Planning Board at the time wanted to preserve the pedestrian scale of Bar Harbor. She added that the parking requirement was removed from residential dwellings for an added incentive for developers to use the fourth story incentive.

Mr. Hamilton and Mr. Bragg debated the court interpretation of the word "OR" in the Genshiemer case and the applicability of this ruling to the proposed hotel. Mr. Hamilton stated that in this case the court ruled that the word "OR" implies a choice. Therefore, Mr. Hamilton asserted that the Bar Harbor height ordinance also implies a choice. Mr. Bragg stated the he did not agree with the applicant's claim and rebutted that when reading an ordinance one must give meaning to all of its parts. He stated that it would not make sense (in this case) to read "OR" as an implication of choice. He added that this interpretation would render the applicability of the Genshiemer case erroneous.

Mr. Bragg stated that any informal vote the Board takes would not become binding until there is a formal decision issued for the project.

Mr. Jardine stated that he feels there is no ambiguity and the two provisions of Section 125-21(G) go together. He added that the ordinance states you get 35' or 3 stories whichever is *less*. The word less implying that this is where the ordinance wants to go...less. Or you get four stories if you devote some of the units to affordable housing. Ms. Williams agreed stating that if the project goes forward as 45', the building will require a modification of standards prior to approval. Mr. Cochary stated he agreed, and that if the applicant keeps the fourth floor, he needs to add affordable housing.

***Mr. Jardine moved to continue the project to the November 4<sup>th</sup> Planning Board meeting. Ms. Williams seconded the motion and the Board voted unanimously to approve the motion.***

**B. Public Hearing – SP-09-05 – Proposed Verizon Wireless Telecommunications Facility**

**Project Location:** 854 State Highway 3 Bar Harbor Tax Map 202, Lot 061

**Applicant:** Verizon Wireless

**Application:** Construct a wireless telecommunications facility at 854 State Highway 3 (also known as the Sweet Pea Farm)

Mr. Anderson, the project representative, provided two different pictures/specifications of what the monopine design could look like.

Mr. Bowden stated that a cell phone tower in this area of Route 3 is very important for emergency situations.

Mr. Kelly, Planner for Acadia National Park, stated that the Park is not necessarily opposed to the proposed tower, but is hopeful that it will blend with the surrounding scenery. Mr. Kelly stated that the variation in the design/length of branches should be concentrated at the top of the tower where it is most visible from public view. He added that the Park would also like to see some requirement added which would oblige the applicant to preserve surrounding vegetation.

Mr. St. Germain, who is an abutter to the proposed site, stated that he fully supports construction of the proposed tower.

Mr. Cochary suggested Mr. Kelly work with the applicant to redesign the branches at the top of the proposed monopine so that they look more realistic.

*Ms. Williams moved to continue the project to the November 4<sup>th</sup> Planning Board Meeting. Mr. Jardine seconded the motion and the Board voted unanimously to approve the motion.*

**C. Public Hearing – SD-08-04 – Vicki Hall Subdivision**

**Project Location:** Eagle Lake Road (near the entrance of MDI High School), Bar Harbor Tax Map 224, Lot 15

**Applicant:** Vicki Hall

**Application:** Project proposes to divide one lot into two parcels.

Mr. Cochary recused himself.

Mr. Musson provided an overview of the project.

Mr. Kelly stated that he believed this property is part of a significant habitat area for wading birds. Mr. Musson provided a rebuttal to Mr. Kelly's comments and stated that the area is no longer mapped as part of a significant habitat area.

*Mr. Jardine moved to continue the project to the November 4<sup>th</sup> Planning Board meeting. Ms. Williams seconded the motion and the Board voted unanimously to approve the motion.*

**D. Continuation of Public Hearing – Zoning Map Amendment Request – Jordan-Fernald Funeral Homes**

**Project Location:** Eden St. Map 103 Lot 52

**Applicant:** Jordan Fernald Funeral Homes

**Application:** Project Request Zoning Amendment

This project was continued to the November 18, 2009 Planning Board Meeting.

**E. Completeness Review- SP-09-07 – Proposed AT&T Mobility Wireless Telecommunications Facility**

**Project Location:** 286 State Highway 3 Bar Harbor Tax Map 209, Lot 106

**Applicant:** AT&T Mobility

**Application:** Construct a wireless telecommunications facility at 286 State Highway 3 .

Mr. Hobbins, the project representative, provided an overview of the proposed project and stated that co-location with the proposed Verizon tower would not meet the coverage objectives of AT&T. He added that the monopole design was chosen because of the shielded location of the proposed tower. Mr. Hobbins also provided an overview of the photo simulation that was submitted with the application.

Mr. Hobbins requested a modification of standard for roadway width from the required 18' to 12' due to the infrequent access to the site.

The applicant explained why the Verizon tower would not meet its coverage objective.

Mr. Kelly, Planner for Acadia National Park, stated that under Section 125-69(T)(9)(10) the applicant's plan to camouflage the monopole could be improved. He also stated that the tower could be painted to reduce the reflectivity.

*Ms. Williams moved to continue completeness review to the November 4, 2009 Planning Board meeting. Mr. Jardine seconded the motion and the Board voted unanimously to approve the motion.*

#### **F. Public Hearing – Possible Adoption of Changes to Planning Board Rules and Procedure.**

*Mr. Jardine moved to adopt the revised rules of procedure as presented in the latest draft. Ms. Williams seconded the motion and the Board voted unanimously to approve the motion.*

#### **E. OTHER BUSINESS**

##### **a. Street Ordinance**

*By acclamation of the chair the Board moved to discuss this issue at the November 4, 2009 Planning Board meeting.*

##### **b. Fiscal Year 2011 Budget Requests**

Mr. Cochary commented that legal services are very important to the Board and that he feels it is beneficial to have them represented at each Planning Board meeting.

##### **c. June 2010 amendment update and discussion.**

Mr. Madigan provided an overview of the October 15, 2009 Neighborhood Meeting.

Mr. Benore spoke on behalf of the West Street Residents Association (WSRA). He stated that this informal neighborhood association is highly concerned with the development of 120 West Street. Particularly, the WSRA is concerned that the property owner could convert much of the lot to a parking lot. The WSRA would like the Planning Department to devise some kind of standards to prevent this. Mr. Benore proposed that the Town modify its definition of Family.

Mr. Aaron, a concerned resident, stated that he is alarmed with the proposed restrictions the Planning Department has proposed for the Village Historic District and does not believe these restrictions would be consistent with the Comprehensive Plan.

Mr. Collier, a concerned resident, stated that he believes there are too many allowable uses in the Village Residential District.

Mr. Madigan suggested the Board discuss the implications of the October 15, Neighborhood Meeting, and the Draft district language for Village Historic and Village Residential at the November 18, 2009 Planning Board meeting.

#### **F. PLANNING DIRECTOR'S REPORT**

##### **a. Request for follow up workshop with Town Council regarding the Town Hill Mini Plan.**

Ms. Krieg asked if the Board could meet on the 12<sup>th</sup> of November at 6:00 pm. She stated that she would confirm this meeting date via email.

#### **G. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA**

**There were none.**

#### **H. ADJOURNMENT**

*Mr. Jardine moved to adjourn the meeting. Ms. Williams seconded the motion and the Board voted unanimously to approve the motion. The meeting was adjourned at 10:00pm*

Minutes prepared by Staff Planner Brian Madigan for Planning Board Review at their November 4, 2009 meeting

*Signed as approved:*

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Clyde L. Jardine, Jr., Secretary  
Planning Board, Town of Bar Harbor

Date